IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.601 OF 2007
IN
APPEAL FROM ORDER NO.434 OF 2007

The Charkop Atharva Co-op.
Housing Society Ltd. ...Applicant

Versus

M/s.S.S.Developers & Anr. ...Respondents

Shri H.S.S.Murty for the Applicant.
Shri Manoj Kumar Upadhay for the Respondents.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 13, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The Applicant is the original Defendant and the Respondents are the original Plaintiffs. By the impugned order the learned trial Judge has granted ad-interim relief in terms of prayer clause (b) of the Notice of Motion. The prayer clause (b) of the Notice of Motion reads thus:

> "(b) That the Defendants, their member, servants agents, representatives, any person or persons through or under them be restrained by an order and injunction of this Hon'ble Court from disturbing the peaceful possession of the Plaintiff's suit property i.e Plot No.811, RCS 6, Sector 8, S.No.41 of

village Charkop, Kandivali (West), Mumbai 400 067".

2. The suit filed by the Respondents is simplicitor for injunction for protecting the alleged possession of the Respondents over the suit property. It is not in dispute that the Applicant Co-operative Housing Society is the owner/allottee of the suit property i.e Plot No.811 out of Survey No.41 of village Charkop, Taluka Borivali, Mumbai. The Respondents are relying upon an agreement executed by and between the Applicant and the Respondents.

3. Prima facie, on plain reading of the said agreement, the Respondents have been appointed as building contractors by the Applicant. By no stretch of imagination, the Respondents who are building contractors can claim to be in possession of the property of the Applicant. Therefore, such ad-interim relief could never have been granted in favour of the Respondents.

4. A case is made out for grant of stay of execution and operation of the impugned order. However, opportunity will have to be granted to the Respondents to remove their articles and material on site.

5. Hence, Civil Application is disposed of by passing following order:

(i) There will be interim relief in terms of prayer clause (a) subject to modification that it will be open for the Respondents to take away their articles/material, if any, on the site within the period of one week from today.

(ii) In case there is any dispute between the parties about the ownership of articles/material, it will be open for the Respondents to file appropriate application in that behalf before the trial Court.

JUDGE